
Pandugayala Subbarayadu Vs Kattamuri Sri Krishna

Civil Revision Petition No. 491 of 2008

Court: Andhra Pradesh High Court

Date of Decision: April 29, 2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) – Order 21 Rule 37, Order 21 Rule 38, 51, 60(1)

Citation: (2008) 4 ALD 454 : (2008) 4 ALT 417

Hon'ble Judges: G. Rohini, J

Bench: Single Bench

Advocate: V.R. Reddy Kovvuri, for the Appellant; K. Rathangapani Reddy, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

G. Rohini, J.

This Civil Revision Petition is directed against the order dated 28.11.2007 in E.P. No. 54 of 2007 in O.S. No. 271 of 2003

on the file of the Court of Junior Civil Judge, Badvel.

2. The revision petitioner is the judgment-debtor, who suffered a money decree. The respondent herein, who is the decree-holder, filed E.P. No.

54 of 2007 under Order XXI rules 37 & 38 of CPC (for short, "the Act") for arrest and detention of the judgment-debtor in civil prison for

realization of the decretal amount. The said petition was allowed directing the revision petitioner/judgment-debtor to pay the E.P. amount within

one month failing which warrant of arrest shall be issued. The said order dated 28.11.2007 is under challenge in the Revision Petition.

3. I have heard the learned Counsel for both the parties. The learned Counsel for the petitioner vehemently contended that the conclusion of the

Court below that the petitioner has sufficient means to pay the decretal amount, but refused to pay the same is erroneous and consequently the

impugned order directing arrest and detention in civil prison is impermissible and unsustainable.

4. On the other hand, the learned Counsel for the respondent submitted that having regard to Ex.P1 which established that the judgment-debtor

owned a house, the Court below was justified in recording a finding that the judgment-debtor, despite having sufficient means evaded payment of

the decretal amount. It is to be noted that the decree-holder/respondent herein got himself examined as P.W.1 and produced Ex.P1 house tax

demand extract, which bears the name of the judgment-debtor as its owner. The said plea was denied by the judgment-debtor in his counter as

well as in his evidence as R.W.1. However, the Court below disbelieved the version of the judgment-debtor and held that by producing Ex.P.1 the

decree-holder made out a prima facie case that the judgment-debtor owned a house and therefore the burden shifted to the judgment-debtor to

show that the said house did not belong to him, which he failed to discharge. Accordingly, the Court below while holding that the judgment-debtor

having sufficient means evaded to pay the decretal amount, ordered arrest of the Judgment debtor.

5. From the material on record, it is clear that the finding recorded by the Court below that the judgment-debtor has sufficient means to pay the

decretal amount is solely based on Ex.P.1 produced by the decree-holder in support of his plea that the judgment-debtor owned a house.

6. Even assuming that the finding recorded by the Court below is correct, the question that arises for consideration is whether in the absence of any

material to show that the Judgment debtor is receiving any income out of the said house property, is it permissible to order arrest of the judgment-

debtor in exercise of the jurisdiction u/s 51 read with Order XXI Rule 37 of Code of Civil Procedure.

7. It is to be noted that the decree-holder in his evidence as P.W.1 disposed that the judgment-debtor had moveable and immovable properties

and that he was a businessman getting an income of Rs. 10,000/- per month. It was also deposed that the judgment-debtor got immovable

property out of which he is getting an income of Rs. 50,000/-. However, except Ex.P.1 house tax demand extract claiming that the said house

stands in the name of the judgment-debtor, no other evidence could be produced to establish the plea that the Judgment debtor had sufficient

means to pay the decretal amount. On the other hand, the judgment-debtor contended that the said house did not belong to him and that he had no

means to pay the decretal amount.

8. It is a well settled principle of law that to exercise the jurisdiction under Order XXI Rule 37 of Code of Civil Procedure, satisfaction of the

Court that the judgment-debtor having means to pay the amount of decree, refused or neglected to pay is mandatory. As held by the Supreme

Court in Jolly George Varghese and Another Vs. The Bank of Cochin, , simple default to discharge the decree is not enough, but there must be

some element of bad faith beyond mere indifference to pay. Even where it is pleaded that the Judgment debtor is possessed of some immovable

property, the burden lies on the decree-holder to show that such property is not a property exempted from attachment in execution of a decree

and that the Judgment debtor has the capacity to pay the decretal amount. The Explanation to Section 51 of the CPC specifically provides so and

for ready reference the same may be extracted hereunder: 51. Powers of Court to enforce execution:

9. Explanation:-In the calculation of the means of the Judgment debtor for the purposes of Clause (b), there shall be left out of account any

property which, by or under any law or custom having the force of law for the time being in force, is exempt from attachment in execution of the

decree

10. Thus, it is clear that while assessing the means of the judgment-debtor for the purpose of execution of a decree by committing the judgment-

debtor to civil prison, the property which is exempted from attachment under any law or custom having the force of law for the time being in force

cannot be taken into consideration. It is relevant to notice that Clause (c) of proviso to Section 60(1) of CPC specifically exempts houses

belonging to an agriculturist or a labourer or a domestic servant and occupied by him from attachment.

11. In the instant case, the Judgment debtor while denying that he possessed of a house pleaded that he was a coolly and was earning his livelihood

as a daily wager. In the circumstances even assuming that Ex.P.1 produced by the decree- holder is genuine and it is established that the Judgment

debtor possessed of a house, it is necessary for the Court to make an enquiry that such house is not in personal occupation of the Judgment debtor

and not a property exempted from attachment under the Explanation to Section 51 read with Section 60(1) of Code of Civil Procedure. It is also

necessary for the Courts to enquire whether the property possessed by the Judgment debtor is income yielding so as to hold that he has sufficient

means to pay the decretal amount at the relevant point of time. In case the immovable property possessed by the Judgment debtor is not yielding

income to enable the Judgment debtor to pay the decretal amount, probably it is for the decree-holder to take recourse to other modes of

recovery in execution of the decree instead of insisting on arrest of the Judgment debtor. In the absence of such enquiry, it cannot be concluded

that the Judgment debtor has sufficient means to pay the decretal amount.

12. It has been held by the Apex Court in a catena of decisions that the Courts are expected to be cautious while making order of arrest in

execution of decree since it involves personal liberty and it is necessary for the Courts to examine whether other modes of recovery are available to

the decree-holder and whether it is absolutely necessary to order arrest for recovery of the decretal amount. Since no such enquiry was conducted

and the Court below presumed that the Judgment debtor has sufficient means only on the basis of Ex.P.1, I am of the opinion that the impugned

order of arrest was not in conformity with the requirements contemplated u/s 51 read with Order XXI Rule 37 of Code of Civil Procedure. Hence,

the order under Revision, which suffers from a material irregularity in exercise of jurisdiction conferred under law is unsustainable and liable to be

set aside.

13. Accordingly, the Order under revision is hereby set aside and the Civil Revision Petition is allowed with a direction to the Court below to

reconsider E.P. No. 54 of 2007 after making enquiry in the light of the observations made above and pass appropriate orders afresh in

accordance with law. No costs.